

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, SEPTEMBER 17, 2003**

**C-1    CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of September 17, 2003, was called to order by Mayor Hitchcock at 5:10 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**C-2    ANNOUNCEMENT OF CLOSED SESSION**

- a) Actual litigation; Government Code §54956.9(a); one case; People of the State of California and the City of Lodi, California v. M & P Investments, et al., United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Negotiate modification(s) to land lease(s) for White Slough Water Pollution Control Facility Property regarding APN Nos. 055-120-03, 08, and 11; 055-130-04, 13, and 14; and a portion of 055-130-15; 055-150-27 and 28; and 055-190-01; negotiating parties are Bechthold-Kirschenman and Lima Farms; Government Code §54956.8 (PW)

**C-3    ADJOURN TO CLOSED SESSION**

At 5:10 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:05 p.m.

**C-4    RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:13 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

In regard to Item C-2 (a), there was no reportable action taken. Mayor Hitchcock stated that this Item was related to regular calendar Item I-2.

In regard to Item C-2 (b), Council provided direction to its negotiating staff.

**A.    CALL TO ORDER / ROLL CALL**

The Regular City Council meeting of September 17, 2003, was called to order by Mayor Hitchcock at 7:13 p.m.

Present: Council Members – Beckman, Hansen, Howard, Land, and Mayor Hitchcock

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**B.    INVOCATION**

The invocation was given by Pastor Matt Duerr, Zion Reformed Church.

**C.    PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Hitchcock.

**D.    AWARDS / PROCLAMATIONS / PRESENTATIONS**

D-1    Awards – None

D-2    Proclamations – None

- D-3 (a) Kathy Grant, Watershed Education Coordinator, introduced Will Thompson, a student from Elkhorn School, who invited the public to participate in an effort to cleanup the Mokelumne River in conjunction with California's Coastal Cleanup Day on September 20.
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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$5,032,947.00.
- E-2 The minutes of August 20, 2003 (Regular Meeting) and September 9, 2003 (Shirtsleeve Session) were approved as written.
- E-3 Received the report of the sale of surplus equipment.  
Council Member Hansen noted that two surplus vehicles were sold for \$93, and he suggested that the City look into salvaging them, which might be more lucrative.
- E-4 Adopted Resolution No. 2003-168 approving the plans and specifications and authorizing advertisement for bids for the Main Street Storm Drain Improvement Project (Lodi Avenue to Flora Street) and authorizing the City Manager to award or reject the contract up to \$240,000 and appropriated funds in accordance with staff recommendation.
- E-5 Approved the plans and specifications and authorized advertisement for bids for Emerson Park Playground Improvements, 11 North Hutchins Street.
- E-6 Approved the specifications and authorized advertisement for bids for Parks and Recreation Tabloid printing.
- E-7 Authorized the advertisement for Transportation Services for the Sandhill Crane Festival and authorized use of buses should no alternate provider be willing to perform the service.
- E-8 Declared outdated hose "surplus" and approved the donation to Lodi Unified School District Regional Occupation Program and Lone Fire Department.
- E-9 Adopted Resolution No. 2003-169 authorizing the purchase of seven Motorola MTS 2000 radios in the amount of \$15,000, funded via Auto Theft Prosecution Funds, for the Lodi Police Department's Special Investigations Unit.
- E-10 Adopted Resolution No. 2003-170 authorizing the purchase of Safari Recreation Management Software for use by the Parks and Recreation Department from The Active Network, Inc., of Sacramento, in the amount of \$20,675.46.
- E-11 Adopted Resolution No. 2003-171 authorizing the City Manager to enter into a lease purchase agreement for two Pierce Quantum fire apparatus and equipment, with an approximate annual lease cost of \$152,000 and approximate purchase price of \$913,108.
- E-12 Adopted Resolution No. 2003-172 authorizing the City Manager to execute a contract with Comcast Media for transit advertising for fiscal year 2003-04 in the amount of \$6,000.
- E-13 "Adopt resolution authorizing the City Manager to amend the existing Lodi Energy Efficient Home Improvement Rebate Program to add high-efficiency residential central air conditioning systems as an eligible rebate item" was **pulled from the agenda pursuant to staff's request**.

- E-14 Adopted Resolution No. 2003-173 approving the Parks and Recreation Memorial Tree and Park Bench Policy, as amended.  
City Manager Flynn noted that Council received a "blue sheet" on this item (filed).
- E-15 Adopted Resolution No. 2003-174 authorizing the City Manager to enter into an agreement with Carson Landscape Industries, of Sacramento, in the amount of \$38,170, to conduct a Maxicom site inventory, field water audit, and programming.
- E-16 Adopted Resolution No. 2003-175 amending the powers and duties relating to the Lodi Arts Commission, thereby repealing Resolution No. 92-146.  
City Manager Flynn noted that Council received a "blue sheet" on this item (filed).
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider the Technical Equipment Purchase Proposal for Local Law Enforcement Block Grant Program.

Police Chief Adams reported that the Police Department annually applies for, and again this year was granted, the Local Law Enforcement Block Grant Program. The \$77,974 grant includes a matching amount of \$7,179, which comes out of the Police budget. The funds are used toward technology, e.g. computers, software, and hardware. Chief Adams thanked the members of the Community Advisory Committee for their participation.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Hitchcock second, unanimously adopted Resolution No. 2003-176 approving the Technical Equipment Purchase Proposal for Local Law Enforcement Block Grant Program and authorizing the Lodi Police Department to purchase software and technology updates on equipment that is currently being used by the Lodi Police Department, in the amount of \$77,794, which includes matching funds in the amount of \$7,179.00 from the current City budget.

H. COMMUNICATIONS

- H-1 On recommendation of the City's contract administrator, Insurance Consulting Associates, Inc. (ICA), and Human Resources staff, the City Council, on motion of Council Member Council Member Land, Hansen second, unanimously rejected the following claim:
- a) Peggy Ann Marquart, Don R. Kouns, and Estate of Leo and Elise Neveu, denial of petition to file late tort claim, date of loss 9/4/02
- H-2 Reports: Boards/Commissions/Task Forces/Committees – None
- H-3 The following postings/appointments were made:
- a) The City Council, on motion of Council Member Land, Beckman second, unanimously made the following appointment:

East Side Improvement Committee

Robina Asghar

Term to expire March 5, 2005

H-4 Miscellaneous

- a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through August 31, 2003.

I. REGULAR CALENDAR

I-1 "State Budget update"

City Manager Flynn reported that the state budget was adopted on August 2 and noted that a number of bills are being processed at this time that may have an impact on the City.

Deputy City Manager Keeter stated that Senate Bill 2, authored by Burton and Speier, would affect businesses by requiring universal health care coverage. If adopted, the bill would go in effect in 2006.

MOTION/ VOTE:

There was no Council action necessary on this matter.

I-2 "Discuss engagement of an additional opinion regarding the PCE/TCE (Environmental Abatement Program) matter"

Council Member Hansen explained that as this matter had evolved it became increasingly more evident to him that it was a very complicated legal strategy and Council needed at the very least, to address the issue of getting another opinion and what parameters should be considered. He felt it was important to keep an open mind to all possibilities and not fall into "groupthink" situation where no one questions or challenges what is happening. He suggested that an additional opinion might provide some reassurance to Council and the public that the City is on the right track.

Council Member Beckman stated that he would like to know what the exit strategy is, what kind of settlement options can be considered, and what the cost of those options would be. In addition, it should be determined how the City will pay for the ongoing litigation, what the resolutions are, and how they would affect the financing with Lehman Brothers. Mr. Beckman noted that he had requested a representative from Lehman Brothers come to a City Council meeting to provide information about the financing agreement; however, they declined to do so.

Mayor Hitchcock expressed concern regarding the extended length of the litigation from what the original projections were. Considering the amount of money that had been spent thus far, she felt that in comparison, it would be a minimal cost to obtain another opinion and find out what options exist.

PUBLIC COMMENTS:

- Dennis Zaragoza stated that he was the outside counsel for Unigard Insurance Company and had been involved in litigating against the City since 1967. He offered to speak with any attorney that the City selects to provide background information on the history of the litigation. He believed there were other firms that would be willing to offer their viewpoints as well. He noted that many of those who have been litigating against the City have felt that the City Council has been kept in the dark, and when this occurs, it is impossible to see alternatives and make good choices on behalf of the public.
- Larry Mallory stated that he was one of many concerned citizens who believed that a second opinion should be sought on the financial and legal direction, as well as to determine the City's liability and avenues of escape.

- Ron Bernasconi submitted a letter to Council (filed). He believed it was important that the process for seeking an additional opinion be open, unbiased, and incorporate suggestions from the public. In addition, it should require written disclosures of conflicts of interest or relationships with any of the parties that have a stake in the litigation, as well as their qualifications in environmental law and public finance. He suggested that a steering committee be formed consisting of Mayor Hitchcock, Council Member Hansen, and Judge Baysinger or Seibly to select three or four firms to interview. Candidates should be provided with the following information to review in advance of the interview:
  - The complaint;
  - All counterclaims and cross claims;
  - The 9<sup>th</sup> Circuit Fireman's Fund decision;
  - The four financing agreements;
  - Professional services contract with Envision Law;
  - The Public Financial Management (PFM) report;
  - The Cooperative Agreement;
  - All of Judge Damrell's written decisions;
  - The July 11, 2003 and September 19, 2003, transcripts of the hearings before Judge Damrell;
  - The 3<sup>rd</sup> Amended Scheduling Order; and
  - All relevant City Council minutes including August 6, 2003, and the transmittal to the City Council from Ron Bernasconi for Citizens for Open, Honest and Effective Government dated August 4, 2003 (filed).

Mr. Bernasconi recommended that the additional opinion also give the Council guidance as to the propriety of the conduct of the City Attorney and outside counsel's handling of the case, e.g. not forwarding offers of settlement, notices of hearings, and copies of rulings to the City Council. In addition, the opinion should determine whether the City has recourse for malpractice against outside counsel or others acting as deputy city attorney because they have been given some type of qualified immunity.

Referencing Mr. Bernasconi's letter, Mayor Pro Tempore Howard asked how he came to the conclusion "that the Council appears ready to approve the selection of a law firm to provide a second legal opinion."

Mr. Bernasconi explained that he drew the conclusion from comments made by Council Members Beckman and Hansen and Mayor Hitchcock during meetings and in newspaper articles.

Mayor Pro Tempore Howard expressed concern that information and opinions were being discussed in the newspaper before Council had an opportunity to address them at its regular meetings. She asked Mr. Bernasconi if he had ever stated he would petition for a recall if Council did not consider removing the City Attorney.

Mr. Bernasconi replied that Council had adequate grounds for at least a reevaluation of the City Attorney. He expressed his opinion that recalls are generally a waste of taxpayers' money and added that he believed the next election would solve problems in terms of those who have not shown a willingness to keep a critical eye on the City Attorney.

In response to Council Member Hansen, City Attorney Hays stated that typically when another legal opinion is sought on an issue it is done at the outset, not long after the process has begun. He recalled that the financing was taken to San Joaquin Superior Court and Judge Cruikshank provided an opinion on its validity, which he believed constituted a second opinion.

Council Member Hansen noted that it had been stated that the financing would triple what it is now and then triple again in a certain period of time. He asked Mr. Hays if that were true and if there are safeguards for the City to prevent that from happening. Mr. Hays indicated that he would have to review the document before providing an answer.

In response to questions posed by Council Member Hansen, Mr. Hays stated that Lehman Brothers can look only to recoveries that are made in the litigation. The financing document clearly states that there are no City revenues at risk. He reported that it took Lehman Brothers nearly two years to arrive at the conclusion that it would be able to finance the program and look only to program receipts for payment and he believed that this constituted a second opinion. Mr. Hays stated that he first met attorney Michael Donovan on July 2, 1996, at a meeting that the City Manager had arranged. Mr. Hays reported that he was hired by the City of Lodi in October 1995. His first record of having any involvement in this case was on January 17, 1996, when he spoke with Mike Brady who was outside counsel for the City dealing with the PCE/TCE contamination issue. Originally the City had two choices: 1) either have a program where it would pay out of its water fund to clean up the contamination, or 2) the current environmental abatement program. When the options were presented to Council, Mr. Donovan provided information about environmental procedures and insurance law, and Mr. Hays spoke about utilizing the nuisance provisions of California law. In reference to settlement offers, Mr. Hays explained that parameters were established and he had received direction that Council did not want to see offers that did not meet those parameters. The offers had to have several components to them, including that it had to be in a dollar amount that represented the particular Potentially Responsible Party's judged level of fault in the matter, and it had to address a recovery of the City's response costs. Mr. Hays could not remember any "solid offers" that met those parameters. The only insurance settlement accomplished was with Wausau Insurance, which dealt with one of the many entities involved at the Holtz Rubber Company site, and the defunct corporation called Rantron.

Council Member Hansen clarified that he would like another opinion about the financial agreement and whether or not it was as "iron clad" as it had been presented in terms of protection for the City. In addition, he would like consideration given to the two original strategies considered by Council and a determination made of whether the City is on the right track.

Council Member Beckman recommended that a professional opinion be obtained on the financial ramifications of the following scenarios:

- What would happen if the City settled the case now;
- What would happen if the City were to settle with some of the defendants and not others;
- What would happen if the City went all the way and won; and
- What would happen if the City went all the way and lost.

Council Member Beckman stated that he would like clarification on whether the City has liability, whether it wins or loses the case.

Mr. Hays pointed out that no opinion has yet been rendered on those questions, even by the City's current legal staff, to which Council Member Beckman replied that he would like a response from them.

Council Member Hansen clarified that he would like the firm that provides the additional opinion to determine whether there were more than two strategies originally available to Council and to evaluate the current strategy in terms of case law and decisions that have been made.

Mayor Pro Tempore Howard favored having more frequent closed sessions on this topic to allow Council an opportunity to ask these types of questions and receive answers from legal staff. Ms. Howard had found that each time she had an opportunity to receive information and status reports from staff, it broadened her understanding, and made her more confident that the City was headed in the right direction. She cautioned that timing was important at this juncture because the trial is scheduled for December and two items are in the appeal stage at the 9<sup>th</sup> Circuit Court. The outcome of the appeals will direct the future of the case, and she preferred that more information be gathered by Council prior to making a decision to pursue another opinion.

Mayor Hitchcock expressed concern that the settlement strategy is impacted by the financing agreement, and differing interpretations have been rendered by Mr. Hays and Mr. Donovan about this. In reference to Mr. Hansen's inquiry about the tripling of the financing amount, Ms. Hitchcock explained that it is called the "rule of 72," which means that any debt is going to double every four years if the interest rate is 25%. She was opposed to Ms. Howard's suggestion of waiting for the appeal decisions and pointed out that if the City lost them, it would appeal those decisions, and during this time financing costs would continue to grow. Ms. Hitchcock recalled Mr. Hays saying that the City could get out of the current arrangement at any time; however, she did not believe it was an accurate statement.

In reply to Mayor Hitchcock, Mr. Flynn pointed out that there are three appointees who work for the City Council. He is responsible for most of the administrative functions, while Mr. Hays provides Council with legal advice. Most of the direction involved in this case has gone from the City Council to the City Attorney. He recalled that Mr. Donovan came to him with a proposal, which he referred to the City Attorney, and Mr. Hays brought the case to the City Council. Mr. Flynn stated that he made it very clear when the financing issue came up, that in no case, would he agree to it if any City funds were put in jeopardy. He was assured by the attorneys that that was the case, and has an agreement that states that the City is not liable for the costs. Mr. Flynn acknowledged that the City's financial advisor, Alex Burnett, reviewed the financing agreement and provided opinions and cautionary statements, which raised some questions. He commented that once a major investment is made it is very hard to walk away from it and recognize that a mistake was made. In reference to obtaining another opinion, Mr. Flynn stated that if it would reassure the public and Council, he would recommend and support it.

Council Member Beckman spoke in opposition to getting an evaluation of the City's current strategy, as the value of it would be questionable. He was, however, in favor of obtaining information on other possibilities and choices that are available. He preferred that the focus be on the financial situation and other options. Mr. Beckman noted that before he could entertain the idea of leaving the current strategy, he needed to know how much it would cost.

In response to Council Member Hansen, Mr. Hays drew an analogy to a baseball game and stated that if a person lives and dies by each inning they are not keeping their eye on the end game. He stated that whatever firm is selected to provide another opinion needs to understand the "end game" and advise Council on whether it has an opportunity to be reached. Mr. Hays reported that the financial agreement was looked at as a venture capital transaction because there was no collateral associated with the program other than program receipts. He recalled that in 1999-2000 the venture capital interest rate was in the 40% to 45% range. The financing transaction is not a fixed rate; it is London Interbank Offered Rate (LIBOR) plus 5%, which is in the 20% to 30% range. He explained that it was a taxable transaction from the standpoint of the investor.

- Lori Gualco reported that Guild Cleaners is pursuing a particular strategy to attempt to settle the case. She recommended that the City get another opinion on the impact that the financing has on potential settlements. She suggested that what the City would find is that if it were to accept work as a settlement, that amount would have to be paid back to Lehman Brothers out of the City's general fund in order to compensate the investor for the value of the settlement.

Council Member Beckman agreed with Ms. Gualco's interpretation of the financing agreement.

Ms. Gualco also recommended that the additional opinion determine what impact the Envision fee agreement has on potential settlements. The agreement states that Envision would be paid a success fee of 20% on any settlement that is reached. She questioned whether that includes work as a settlement. If the financing agreement has a negative impact on the ability of the City to settle, because the costs incurred have been so great, then it prevents the City from accepting reasonable settlements. She asked Council how good the strategy was, if at the end of the litigation it wins the case, but owes Lehman Brothers \$50 million.

- Yolanda Bernasconi stated that she was ceding her time to her husband Ron.
- Ron Bernasconi expressed concern that the Council was being misled by Mr. Hays and Mr. Donovan, who said in 1999 that the City could more than recapture all of its costs. He pointed out that a significant component of the cost is interest, which is not recapturable. The PFM report said that the City's acceptance of non-cash settlements would trigger an equal amount of money out of the general fund. The agreement indemnifies Lehman Brothers, so if the judge dismisses the case or the City does not diligently prosecute enough, and Lehman investors do not get their 20% to 30% interest they would sue the placement agent. He suggested if that occurred Lehman Brothers would then hand the summons to the City to defend it. He explained that venture capital is like the down payment on a home, i.e. it is ownership and equity. Lehman Brothers has a first lien claim priority on proceeds. The City has generated a bill today which is \$23 million, plus \$11 million in interest, and a 20% contingency fee to Envision for a total of \$40 million.

Mayor Hitchcock agreed with Mr. Bernasconi's explanation about venture capital.

Council Member Beckman stated that he also had questions about the usurious interest rate the City was being charged and whether it could be recaptured.

*In reply to an inquiry from Council Member Beckman, Mr. Bernasconi acknowledged that the outcome of the additional opinion could result in taxpayers paying for the contamination cleanup. He advised, however, that it is better to deal honestly with the facts and commented that "when you find yourself in a hole, sometimes it is best to stop digging."*

Council Member Hansen noted that Mr. Bernasconi raised some valid issues about indemnification, which should be looked into and clarified.

In answer to Council Member Beckman, Finance Director McAthie reported that the City has spent approximately \$350,000 each quarter on legal expenses. Mr. Beckman pointed out that the litigation has already taken nearly a year longer than was anticipated, and stated that he would like to ask Mr. Donovan if he would entertain the idea, from this point forward, to accept the 20% contingency fee on settlement and drop his hourly fee.

- Doctor Jasbir Gill expressed strong support for the City seeking another opinion on this matter. He believed that the City was on an economic disaster path. He advised Council not to be "penny wise and pound foolish" at this point in time. He concurred



with Mr. Hays that venture capital interest was 23% to 38% in the late 1990s. He reported that for the past 25 years he has reviewed physician malpractice cases for Norcal Insurance Company and offered to give Council a list of qualified firms to provide the additional opinion on the Environmental Abatement Program. He was opposed to the criticism being raised about the City Manager and City Attorney, and believed that they made the right decisions at the outset; however, now the City was at a different juncture.

Council Member Land stated that he would abide by whatever decision the Council makes regarding this matter. Mr. Land recalled that during closed session meetings he and Mayor Hitchcock had already heard all the questions presented this evening by the public and Council Members. He recommended that before a decision is made this evening to obtain an additional opinion, that Council Members receive more information on the history and status of the litigation. He also asked that former Council Members who supported the litigation and financing package be invited to a closed session to discuss the background and their opinions on the matter. He asked City Attorney Hays if there was any personal liability to Council Members for decisions they make pertaining to this issue, such as deciding to end the litigation.

Mr. Hays replied that he doubted the Council would incur personal liability; however, he was unsure, and stated that he had not thought about it before.

Council Member Beckman reported that he had already discussed the Environmental Abatement Program with some previous Council Members and did not believe it would necessarily be beneficial to invite them to discuss the issue in closed session. He pointed out that the longer this is delayed, the more it costs.

#### MOTION:

Council Member Beckman made a motion, Hitchcock second, to direct the City to officially seek a professional evaluation/additional opinion on the following matters related to the Environmental Abatement Program:

1. Financial agreement (with Lehman Brothers, Inc.); evaluation to include possible ramifications to the City of various scenarios that could occur;
2. Determine other potential options and strategies that the City could pursue in regard to the PCE/TCE litigation; and
3. Valuation of the City's current strategy.

#### DISCUSSION:

Council Member Hansen concurred with earlier suggestions that Council needs to have more briefings on the Environmental Abatement Program in closed session.

Mayor Pro Tempore Howard reminded Council to focus on the ultimate goal of cleaning up the contamination. In order to accomplish this, it will be necessary to have a thorough site investigation, which is underway at this time. She advised the Council and public to be patient and think long term, rather than seeking a quick fix to the problem. She believed that the outcome would be favorable if the City is diligent. She clarified that her hope is to be successful with the lawsuit so that the water can be cleaned up with minimal liability on the part of the City.

Council Member Hansen added that Council should retain its original goal of helping businesses in Lodi stay in business by not suffering huge financial losses. He objected to Ms. Howard's term of a "quick fix," as he felt that this discussion and action stems from an obligation to respond to the concerns of the public. He suggested that a future meeting be scheduled for Council to develop specific questions to ask the firm selected to provide an additional opinion.

Mayor Hitchcock agreed with Mr. Hansen's suggestion and emphasized the importance of Council being very involved in the selection process, rather than staff, so that an unbiased opinion is obtained.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hansen, and Mayor Hitchcock

Noes: Council Members – Howard and Land

Absent: Council Members – None

RECESS

At 9:55 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 10:05 p.m.

I. REGULAR CALENDAR (Continued)

- I-3 "Adopt resolutions authorizing execution and delivery of an installment purchase agreement, a bond purchase agreement, and an official statement, and authorizing certain related matters for wastewater system improvements and intention to issue tax-exempt obligations by the City Manager, City Attorney, and City Treasurer (\$5,000,000); and consider awarding a contract for the Year 2003 Interim Improvements contract"

With the aid of an overhead presentation (filed), Public Works Director Prima reported that the Master Plan process for the White Slough Water Pollution Control Facility began in 1999. In February 2000, the City obtained a five-year State Discharge Permit. Subsequent to this, the State Implementation Plan was changed. Mr. Prima explained that because discharge takes place into a dead-end slough, the permit required that filters be installed for tertiary treatment and a higher level of disinfection. Farmers use the water that is discharged into Dredger Cut for irrigation. As part of the Master Plan process, Mr. Prima reported that staff considered various alternatives including percolation in the winter or year round, moving the discharge point to Bishop Cut, installing filters, and creating a wetland. At that time, the cost for the filter project was estimated at \$15 million. A percolation study in 2001 found that there was less infiltration capability than what was originally thought when the Master Plan was done and it would have entailed significantly more land than what was anticipated in the cost analysis. The Department of Health Services adopted new standards for discharge of wastewater to land where it was intended to percolate and required that tertiary filters be installed, which would increase the cost significantly. Most recently staff has been working with the state to get a flow meter into Bishop Cut.

Mr. Prima reported that the facility's secondary treatment process needs to be expanded. The plant was designed to handle 8.5 million gallons a day, and it is now running at 6.5. Due to the state's requirement for a higher level of treatment, the plant no longer has an 8.5 million gallon capacity. Phase 1 of the project, presented tonight, are the aeration improvements. Phase 2 will be to install the filters, which have a 2004 deadline. Staff recommends that ultraviolet light disinfection is used instead of chlorine. The consultant's estimate for Phase 2 is \$24.8 million. The plan for Phase 3 is discharge relocation in the wetland, which would require land acquisition. Mr. Prima stated that Phases 2 and 3 would need additional financing over and beyond the state revolving loan fund.

Del Kerlin, Wastewater Plant Superintendent, cautioned that if Phase 1 is not done in a timely manner the groundwork would not be done to install the filters by the deadline.

PUBLIC COMMENTS:

- Mimi Henderson, President of Henderson Capital Partners, stated that her firm is the managing underwriter on the California Statewide Community Development Authority (CSCDA) Water and Wastewater Pooled Revenue Bond Program, which was started in 1998. The company issues three to four pools a year of tax-exempt, fixed-rate revenue bonds. The Joint Powers Authority is sponsored by the League of California Cities and the California State Association of Counties. Union Bank of California is the trustee. Financial Securities Assurance Company insures the bonds, which are

rated "AAA" by all rating agencies. There is no cross collateralization between any of the participants. The proposed plan of financing is to issue *not to exceed* \$5 million. At yesterday's rates, a 20-year net interest cost is 4.56%, which would give the City \$4.850 million in net proceeds at an average annual debt service of \$364,000. A 30-year net interest cost is 4.94%, with \$4.840 million in proceeds, at an average annual debt service of \$312,000.

In answer to Council Member Land, Ms. Henderson reported that the trustee's annual fee is \$1,850 and the CSCDA fee for being part of their program is .15%, which amounts to \$500 a year. A standard call feature of nine years was put on the issues to get the lowest interest rate possible. An earlier call feature interest rate would be about 10 to 15 basis points higher. She noted that the City has the option to advance refund once.

- Sean Tierney, Partner with Hawkins Delafield and Wood, stated that he was bond counsel for the program. The debt service on the bond is payable from net wastewater revenues, i.e. the gross revenues of the system less operations and maintenance costs. There is a rate covenant under the documents where the City agrees annually to set rates so that net revenues will equal 110% of debt service, so that there is 10% coverage for reserves, capital, or other uses. There is a test for additional indebtedness that mirrors the covenant, which would cause the City to prove that it could maintain that coverage in the future on any additional borrowing. There is a continuing disclosure agreement which is required when bonds are issued in the marketplace.

In answer to Mayor Hitchcock, Mr. Prima stated that the current Certificates of Participation (COP) were refinanced in 1991 from the original COPs done in the 1980s. The refinance had a 15-year call limitation and are 4.5% to 6.6%. The City still owes about \$9.5 million.

Mr. Prima explained that the proposal this evening is to issue \$5 million bonds for a net proceed of \$4.850 million. The construction contract that staff recommends be awarded tonight is for \$1.6 million. Additionally there will be costs for engineering services, testing, construction administration, and contingencies. Money for design work on the upcoming \$20 million project will be needed, as well as the likelihood of pre-purchasing more equipment. Mr. Prima also recommended that \$1.24 million be paid back to the wastewater fund that was used to pre-purchase equipment earlier this year. He stated that this money was intended to be used for wastewater line replacements.

Mr. Prima stated that the entire project may require three rate increases of 20%. Staff is looking into changes to the rate structure and increased development fees related to wastewater. A recommendation will be reviewed at a Shirtsleeve Session and then brought for Council consideration at a regular meeting.

In reply to Council Member Land, Mr. Prima explained that there is not a separate infrastructure replacement fund; the money goes into the wastewater fund and has been used to replace infrastructure at White Slough.

In answer to Council Member Hansen, Mr. Prima reported that \$2 million a year was budgeted for the capital replacement program.

Mr. Prima pointed out that "blue sheets" related to the staff report and resolution for the construction contract were distributed to Council (filed).

Mayor Hitchcock cautioned not to move too quickly through the project if there is any chance that the state may change its science or reduce requirements as a result of the resistance that is being brought forward by some cities.

Mr. Prima replied that Phase 3 of the project is the one with the most questions, and difficulties may arise during the next round of permitting.

MOTION:

Council Member Land made a motion, Beckman second, to adopt the following resolutions:

- Resolution No. 2003-177 authorizing the execution and delivery of an installment purchase agreement, a bond purchase agreement, and an official statement and authorizing certain related matters for wastewater system improvements;
- Resolution No. 2003-178 regarding its intention to issue \$5,000,000 tax-exempt wastewater obligations (for a 20-year term) by the City Manager, City Attorney, and City Treasurer; and
- Resolution No. 2003-179 awarding the contract for the Year 2003 Interim Improvements to Kirkwood-Bly, Inc., of Santa Rosa, in the amount of \$1,409,935.00, and appropriated \$1,770,000 in accordance with staff recommendation.

DISCUSSION:

Council Member Hansen expressed concern about the impact of the rate increases on senior citizens.

City Manager Flynn replied that staff will attempt to find alternatives for low-income residents and senior citizens.

VOTE:

The above motion carried by a unanimous vote.

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Land reported that he was approached by a homeowner in the Kristmont Acres area who informed him that the residents received notification that the City intended to install streetlights and sidewalks. Mr. Land stated that Kristmont Acres had been established to look like a country setting, which the residents prefer not to be changed. He suggested that a town hall meeting be scheduled to address their concerns and the residents of Kristmont Acres be invited to attend. He announced that the Grape Festival would be held from September 18 through 21.

City Manager Flynn indicated that he would schedule the matter as a regular calendar item.

- Mayor Hitchcock stated that she received a phone message from an individual who claimed that the City would not allow him to get a swimming pool permit if he opposed the installation of streetlights.
- Council Member Beckman commented that he received a similar phone message, stating that in order to get a building permit the individual would be prohibited from signing a petition that was being circulated in opposition to the streetlights and sidewalks.

Public Works Director Prima explained that this issue may be stemming from old improvement deferral agreements, which state that if a homeowner of Kristmont Acres does improvements to their property they are obligated to put in sidewalks and any other improvements that are substandard, such as streetlights.

- Council Member Hansen reported that on September 2 he and Sondra Huff, Electric Utility Manager of Governmental Affairs, went with a contingency to Washington D.C. and met with Congressional Representative Richard Pombo. The issue of discussion was tied to 40-year contracts that expire with PG&E at the end of 2004. The Western Area Power Administration

(Western) has set up grid stations in every region except the Sierra Nevada region, in which Lodi is located. The Department of Energy and the California Independent Service Operator (ISO) have been resistant to Western's establishment of a federal control area. Mr. Hansen explained that the charter of the California ISO does not direct them to be concerned about water rights and distribution of water; whereas, Western coordinates the release of water to generate electricity at a time that is beneficial to farmers, fish counts, etc. He recommended that a Shirtsleeve Session be scheduled to brief Council on these issues. Mr. Hansen reported that he would be participating in a conference call tomorrow about this matter and would then call Congressman Pombo to update him.

- Mayor Hitchcock announced that a representative from Senator Poochigian's office would be at the Carnegie Forum tomorrow from 1:00 to 4:00 p.m. She commended City Clerk Blackston and her staff for their work on the electronic City Council agenda and packet. She also thanked Deputy City Clerk Jennifer Perrin for providing training to Council Members on the use of their notebook computers and features of the e-agenda/packet and Adobe Acrobat software program. She asked City Manager Flynn to encourage all departments to convert their staff reports and packet documents to Portable Document Format, which makes them easier to read and more functional.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced the following birthdays:
  - Charlene Lange – September 22
  - Emily Howard – September 25
  - Vicky McAthie – September 30
  - Susan Hitchcock – October 3

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:47 p.m.

ATTEST:

Susan J. Blackston  
City Clerk